

**REMARKS**

Applicants respectfully request that this application be reconsidered in view of the following remarks and that all of the claims remaining in this application be allowed.

**Rejections under 35 U.S.C. 112**

Claim 19-28 stand rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. Specifically, the Office has taken the position at page 2, last paragraph of the Office Action that:

“...Alzheimer’s disease, senile dementia and Parkinson’s disease are all diseases for which there is no known cure. Thus, the level of enablement to treat (alleviate)/cure (protect against) them is quite high. Applicant’s claims are drawn to a method which is very unbelievable on its face...”

Applicant argues that they are not curing or preventing Alzheimer’s or Parkinson’s which have no known cure but in fact are allegedly protecting/alleviating against the symptoms of a neurological disorder mediated by acceleraered (sic) rates of apoptosis which still reads on curing or preventing diseases such as Parkinson’s since these diseases are mediated by accelerated rates of apoptosis. Applicant even admits on page 6 of their specification that increased rates of apoptosis are known to occur in disease/conditions such as Alzheimer’s and Parkinson’s.”

Applicants disagree with this analysis. First, no documentation or declaration has been provided by the Office to substantiate the allegation that the “diseases such as Parkinson’s since these diseases are mediated by accelerated rates of apoptosis.” Reference to page 6 of Applicants’ specification fails to substantiate any such allegation. The apparent relevant section of page 6 of the specification states that:

“The fact that such disorders are associated with increases in apoptosis is known...”.

Nothing in this quoted section states or suggests that apoptosis mediates these diseases. The Office provides NO reasoned basis to conclude this other than reference to Applicants’

specification which, as above, does not support this conclusion. In point of fact, to allege a correlation between the manifestation of a neurological disease (increases in apoptosis) to mediation of the disease itself is akin to stating that a fever is the mediating cause of a viral infection. Such is not credible.

As noted in the response to the prior Office Action, Applicants are not claiming of treating or preventing Parkinson's, Alzheimer's or senile dementia. Rather, Applicants are claiming methods for alleviating or protecting against the *symptoms* arising from a neurological disorder involving accelerated rates of apoptosis. Again, using the fever example, such claims are akin to reducing the fever of a patient infected with a viral infection. There is no correlation that reducing the fever will treat the underlying disease.

Accordingly, the Office Action fails to substantiate why Applicants claims are non-enabled. In this regard, Applicants remind the Office that the onus is on the Office to set forth reasoned arguments as to why Applicants claims are not enabled. Having failed to do so, this rejection is in error.

Notwithstanding the above and in order to facilitate allowance of this application, Applicants enclose herewith the declaration of Marina A. Lynch, Ph.D.

**CONCLUSION**

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872 referencing docket no. 355908-1300. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872 referencing docket no. 355908-1300. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872 referencing docket no. 355908-1300.

Respectfully submitted,

Date 8-30-04

FOLEY & LARDNER LLP  
Customer Number: 38706  
Telephone: (650) 856-3703  
Facsimile: (650) 856-3710

By Gerald F. Swiss

Gerald F. Swiss  
Attorney for Applicant  
Registration No. 30,113